

Zoning Board of Appeals  
Village of Tarrytown  
Regular Meeting  
September 11, 2017 7:30 p.m.

PRESENT: Chairwoman Lawrence, Members Maloney, Jolly, Rachlin; Counsel Addona; Village Engineer Pennella; Secretary Meszaros

Absent: Member Weisel

Chairwoman Lawrence called the meeting to order at 7:32 pm.

#### APPROVAL OF THE MINUTES – August 14, 2017

Mr. Maloney moved, seconded by Ms. Lawrence, that the minutes of the August 14, 2017 meeting be approved as submitted. All in favor. Motion carried.

*Portions of this meeting have been transcribed by a court stenographer and will become part of the record.*

#### CONTINUATION OF PUBLIC HEARING – Peter Bartolacci – 67 Miller Avenue

Counsel Addona advised that the Public Hearing was closed at the August 14, 2017 meeting and the Board directed Counsel to prepare a draft Resolution based upon their deliberations. It has been prepared and circulated to the Board for review and comment and copies have been made available to the public this evening. Counsel Addona said that, after she reads the draft Resolution, the Board will have the opportunity to discuss and deliberate amongst themselves and make any modifications, additions, or amendments. If the Board feels comfortable then they may vote on the application. Counsel Addona read the draft Resolution into the record, attached as "Exhibit A" to these minutes.

Ms. Lawrence thanked Counsel and said she feels the Resolution covers items that were discussed.

Mrs. Bartolacci asked if she could clarify an item in the Draft Resolution before the Board voted. Mr. Bartolacci added that he feels they should be able to ask a question and get clarification because once the Board votes, it is binding. Counsel said if it is a procedural question, she will answer it. Mrs. Bartolacci referred to condition item #5 and was concerned that the ownership of the existing stone wall on the property line may be a problem and may prohibit them from starting the project within the required time. She wanted to know if it would delay them in getting a building permit. Counsel Addona advised the Board that they may want to consider amending this to the extent that the applicant has the legal right to pursue the improvements. Mrs. Bartolacci said that would be helpful and thanked the Board.

Mrs. Bartolacci continued to ask questions and Counsel Addona said this is now less procedural. The Board is considering conditions. Ms. Lawrence duly noted Mrs. Bartolacci's comment and said they will discuss an amendment to condition #5.

Mr. Jolly asked about the chain link fence on the property. He said the applicant said they would repair or replace it. Mr. Bartolacci said that is not what was said. Ms. Lawrence reminded Mr. Bartolacci that the Public Hearing is closed.

Mrs. Bartolacci offered some insight to the location of the chain link fence. Mr. Pennella looked at the survey and confirmed that this fence is on the Bartolacci property.

Ms. Lawrence asked Mr. Jolly why he thinks this is an issue. Mr. Jolly would like the fence repaired or replaced. Ms. Lawrence asked if this issue could be subject to the review of the Planning Board. Counsel Addona said yes and the Board agreed that it be included.

Counsel Addona, at the direction of the Board, will revise condition #5 of the draft resolution to say that the applicant shall make any and all necessary repairs or improvements to the chain link fence and the stone wall determined to be necessary and as permitted to the extent they can legally due so.

Counsel Addona advised the Board that they can vote on the Resolution as amended.

Ms. Lawrence made a motion to vote on this Resolution.

The Board voted as follows:

Mr. Maloney:	No
Ms. Lawrence:	Yes
Mr. Jolly:	Yes
Ms. Rachlin:	Yes
Ms. Weisel:	Absent

The Resolution as amended was adopted by a 3 to 1 vote.

NEW PUBLIC HEARING – New Cingular Wireless – AT&T -120 White Plains Road

Counsel Addona read the Public Hearing notice.

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 7:30 p.m. on **Monday, September 11, 2017**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

New Cingular Wireless PCS LLC (AT&T)  
 One AT & T Way  
 Bedminster, NJ 07921

**The variance sought is as follows:**

Code Description	Max. Height (Permitted)	Existing	Proposed	Variance Required
Article XIII, §305-86 Setbacks §305 Attachment 7, Column 19 – Max. Height (Based on average grade elevation 159.7)	35.0 ft. at Elevation 194.70	86.22 ft. at Elevation 245.92	97.13 ft. at Elevation 256.83	62.13 ft.

For an interpretation of the Building Inspector's determination that a variance is required from Chapter 305 of the Village of Tarrytown ("Zoning Code") for the proposed installation of a wireless telecommunications facility on the rooftop of an existing building, or in the alternative, a variance to allow the installation of the wireless telecommunications facility. The property is located at 120 White Plains Road, Tarrytown, NY and is shown on the tax maps as Sheet 1.140, Block 94, and Lot 5.2 and is in the OB Zoning District.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

Additional approval is required from the Village of Tarrytown Planning Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros  
 Secretary to the Zoning Board

Dated: August 30, 2017

The mailing receipts were received and the signs were posted. Board members visited the property.

Kristen Motel, Attorney, of Cuddy & Feder, LLP, on behalf of the applicant AT&T, is proposing the installation of a rooftop wireless telecommunications facility on an existing building at 120 White Plains Road, which is pre-existing non-conforming with respect to height. Applicant is asking for a height variance interpretation or, alternatively, a variance pursuant to the public utilities standard. She stated that the antenna are not adding to the height of the building. Ms. Motel briefly showed the plan and explained that 12 antennas, 4 per 3 sectors, will be installed on the roof. There is also an

equipment platform and an emergency generator which will be installed in the basement. The height of the building is 86 feet; the top of the antenna is 95 feet. The existing penthouse is 108 feet. The antenna height fall somewhere between the penthouse and the top of the roof.

Ms. Motel is respectfully requesting that the Board grant the variance, or in the alternative, issue a determination that the variance is not necessary since they believe the benefit of having reliable wireless service outweighs any minimal detriment to the community at this site.

Counsel Addona explained to the Board that the Building Inspector interprets the code and, based on this application and code provision, he determined that the antenna has to comply with the height requirements, and it does not, so he feels it needs a variance. The applicant argues that the antenna is not included in height. The Board can agree with this, or alternatively, if the Board agrees with the Building inspector, then they will need to consider a variance.

Mr. Maloney asked Mr. Pennella if the penthouse is included in the total height of the building. Mr. Pennella said penthouses are permitted as long as they don't exceed a certain percentage of the height of the building. He referenced the section of the code which lead to his determination with regard to Wireless Telecommunication Facilities and read section 305-86 which states that, "All WTSPs and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. It shall be demonstrated to the satisfaction of the Board that the proposed WTSP is set back adequately to prevent damage or injury resulting from icefall or debris resulting from failure or collapse of a WTSP or any part thereof, and to avoid and minimize all other impacts upon adjoining properties." So, therefore, the applicant has to comply with the height in accordance with table 7 in the code.

Ms. Lawrence said this is pretty clear and she asked Ms. Motel why she thinks a variance is not needed.

Ms. Motel said that section 305-5 defines the height of the building as the distance from the grade to the highest point of the roof. She said that the antenna are attached to the floor of the roof so they should not be included in the height by definition. In addition, since it is non-conforming, the non-conforming condition is permitted to continue as long as they are not increasing degree of the non-conformity of the building, and pursuant to the definition of height, they are not increasing the height of the building.

Ms. Motel also said that they are certainly fine with pursuing the variance they have requested. She referenced section 305-87 (a) which says that antenna shall not be 15 feet higher than the roof. She stated that they comply with this section since the antenna are a little less than 9 feet.

Ms. Lawrence asked Ms. Motel if the antenna can be seen from the road and parking lot. Ms. Motel referred to her photo submission in the application and said the site is

located far from residences and there is minimal visual impact and, in addition, the penthouse is 8 feet taller than the top of the proposed antennas.

Ms. Lawrence noted for the record that they saw the indoor garage area where the generator will be installed at the site visit. Ms. Rachlin asked how high the equipment platform is. Ms. Motel said about it is less than the antennas, about 1 or 2 feet higher than the parapet. The engineer, in the audience, confirmed that it will be screened by the parapet and cannot be seen from the ground level.

Ms. Lawrence asked how long the lease will be at this site. Ms. Motel said that depends upon negotiations. Mr. Jolly asked why they are moving from this site.

Ms. Motel said the lease is terminated at facility. AT&T would have preferred to stay. That facility was a 2G facility and to upgrade it would require more space on the rooftop, and she does not believe additional space was available.

Mr. Pennella said that this same question was raised at the Planning Board meeting which clearly indicated that 303 was not interested in renewing the lease. We asked the applicant to provide proof of this from the owner. We reached out the property manager via email and the response was that, " AT&T did not request to continue their lease, They requested to terminate their lease terms. I do not understand why they would present to the Planning Board that we declined several times. That is not accurate."

Ms. Lawrence said either way they have to find a new space.

Mr. Pennella added that with regard to visibility from Route 119, there was a similar project at 155 White Plains Road and in the winter, it is highly visible from Martling Avenue by Hitachi.

Ms. Lawrence asked if they looked at other sites. Ms. Motel referred to Exhibit F of the application and this was the only site available for AT & T. She also referred to Exhibit G which are photo simulations of the antenna indicating that they will be minimally visible.

Mr. Maloney asked about the screening on top of the building. Ms. Motel said there is a parapet there. He asked about the screening panels. Ms. Motel said that the Planning Board is determining whether they would like the antenna screened or not.

Mr. Pennella said the Planning Board did not want the screening, so he suggested that in lieu of a rectangular screening maybe they could slope the antenna to mitigate their visibility.

Ms. Lawrence asked about the sectors. Ms. Motel said there would be 3 sectors. Mr. Jolly asked how many stories is the building. Ms. Motel said there are 6 stories.

Ms. Motel said there is a real critical need for this facility now since there is a gap in service since 303 South Broadway is off line.

Ms. Lawrence said it is a difficult when you have to weigh the practical with the aesthetics. If you could make it look less obtrusive. Ms. Motel said the panels add bulk but we can also paint the antenna a gray color to match the skyline.

Ms. Rachlin asked if there is a picture without the screened panels, just the antenna. Ms. Motel said the Planning Board has these pictures.

Ms. Lawrence would like to see how the panels look in a gray color; maybe it will look better, but she said you really will be able to see them in the winter time. Mr. Pennella said if you drive by 200-220 White Plains Road, you can see the existing antennas.

Ms. Lawrence said we have to vote on the interpretation. She agrees with the Building Inspector's interpretation and feels the applicant should be coming in front of the Board for a variance.

Counsel Addona advised the Board not to close the public hearing unless they are voting on the variance tonight as well. She advised that this is a Type II action and no action is required under SEQRA for both the interpretation and the variance. If you are inclined on voting on the interpretation then you can do so and that will set up the alternative relief they are seeking.

Ms. Lawrence asked how long the antenna facility was at the 303 South Broadway site. Ms. Motel did not have this information. Mr. Pennella said the antenna are not visible from the 303 S. Broadway site. Ms. Lawrence said the building is classic design and you can see the antenna.

Ms. Lawrence asked if anyone in the public had any questions. No one appeared.

She asked the Board how they felt.

Mr. Jolly and Ms. Rachlin agree with the Building Inspector's determination.

Ms. Lawrence asked if there are any other AT&T facilities located in Tarrytown. Ms. Motel said there are 2 sites: She referred to Exhibit D 2: there is one up north closer to sleepy and one further east. She said in the subsequent sheets in the application, there is information that shows the gap of coverage.

Mr. Pennella advised the Board that the Planning Board has hired a radio frequency consultant to review the application for the Planning Board. The secretary can forward this to the Board once it is completed if the Board desires.

Mr. Jolly asked about Planning Board approval. Ms. Motel said that the Board cannot act until they receive a variance. They are asking for a compatible use permit. Mr. Jolly asked what the screening was made of. Ms. Motel said the screening is made of fiberglass to match the building.

Mr. Maloney also stated that he feels that they will need to see a height variance.

Mr. Jolly moved to vote on interpretation of the building inspector that the applicant will need a height variance. The Board unanimously agreed with the Building Inspector's determination and the applicant will need a height variance. All in favor. Motion carried.

Ms. Lawrence said they have determined that a variance is needed and she would like to see a rendering of the building antenna without the screening and the radio frequency report from Mr. Musso, of HDR. Mr. Pennella said as soon as it is submitted, he will provide it to the Board. Mr. Pennella said he is referring to the village consultant's report.

Ms. Lawrence would like the Board Members to drive by the site and look at it from various locations to see if the antenna will be visible. She announced that the next meeting of the Board will be held on Tuesday, October 10, 2017 due to the Columbus Day Holiday.

Mr. Pennella asked the applicant if they considered mounting the antenna to the corners of the penthouse and matching the color. Ms. Motel said structurally they do not know if it can handle that type of equipment. Mr. Pennella said if you mount them on the penthouse, they would be less visible. You can increase height, get your desired range, mount to the building, and you won't have free standing structures. Mr. Pennella asked if they could provide this to the Board by the next meeting. He said that the antenna do not weigh much so that should not be an issue.

Ms. Motel said we will explore if this is feasible. Counsel Addona advised that if it not feasible, please provide an explanation to the Board.

Mr. Maloney moved, seconded by Ms. Lawrence, to adjourn the meeting and continue this public hearing to the next meeting which is scheduled for Tuesday, October 10, 2017. All in favor. Motion carried.

#### NEW PUBLIC HEARING – 202 Lexington Avenue Group LLC – 29 South Depot Plaza

The Secretary read the Public Hearing Notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at **7:30 p.m. on Monday September 11, 2017**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

Lexington 202 Group LLC  
34 Norm Avenue  
Bedford Hills, NY10502

Seeking an appeal for an interpretation of the Building Inspector's determination of Section 305-63.C (1), requiring Zoning Board approval for off-site parking on two separate lots that are not adjacent for the common use associated with the proposed self-storage facility, or alternatively, pursuant to section 305-63.C (1), approval of fifteen (15) off-site parking spaces on lot 37 in order to satisfy the parking requirement for the proposed self-storage facility on lot 38.

The property is located at 29 South Depot Plaza, Tarrytown, New York and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.70 Block 29, Lots 37 and 38 and is located in the ID District.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

Additional approvals will be required from the Planning Board and Architectural Review Board.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros  
Secretary to the Zoning Board

Dated: September 1, 2017

The mailing receipts were received and the signs were posted. Board members visited the property.

Mark Constantine, Attorney, representing Lexington 202 Group LLC, is here on behalf of his client who develops self-storage facilities. Procedurally, with regard to the Building Inspector's interpretation of section 305-63 C 1, Mr. Pennella has determined that lots 37 and 38 on the site plan are not adjoining lots. Mr. Constantine presented the plan. He referred to a large area and identified the existing sports facility on Lot 38 and a small industrial building on Lot 37. Between lot 37 and 38 is lot 39 which is a perpetual driveway easement for ingress and egress for lots 37, 38 and for property owners further south (Westchester County and the Metro North railroad).

Mr. Constantine explained that his client has an application before the Planning Board for site plan approval. Section 305-63 allows them to provide parking for lot 38 on an adjacent lot in order to meet parking requirements for the self-storage use on lot 38. In Mr. Pennella's memo dated, August 31, 2017, he states that the 15 spaces on lot 37 are located on another site. It is his determination that the parking is not on an adjacent lot as the required by the code.



Mr. Constantine said that 36 spaces can be provided on lot 38 and the additional 15 spaces are proposed on lot 37. The proposal is to demolish the building, open up space. The plan submitted is code compliant except for the parking which is why they proposed Lot 37.

Ms. Lawrence asked if the 2 lots go together as part of the purchase. Do they have to purchase the second lot?

Mr. Constantine said the current plan and proposal involves both lots. We took heed of the requirements of the code back in 2013 which overestimates the need for parking at 160 Wildey Street. The 34 spaces was still an abundant amount of parking for this use. So in order to streamline approvals and adhere to the code, we proposed this parking on lot 37. As an alternative approach, his client could have and may just apply for a parking variance for Lot 38. Mr. Constantine made reference to a memo from Planner Galvin which basically said that self-storage facilities do not generate a lot of traffic and parking.

Ms. Lawrence said she remembers and it does seem to be a unique use because people do not stay there all day long. She asked if there would be employees at the site. Mr. Constantine said he could ask his client to answer that, but he said they are here for a code interpretation. There is no definition of the word "adjacent" in the code. These laws should be interpreted and strictly construed and should be read in the most specific sense. He feels that the word "adjacent" does not mean contiguous or touching. He referenced Section 305-62 which specifically refers to the word "adjoining" for merging two lots, which he thought made sense since it would be difficult to merge two properties that did not adjoin or touch, and 305-63 (C) 1 in your code uses the word "adjacent".

Ms. Lawrence said that you could say that the building is adjacent, but she has always referred to adjacent as next door, and she has to be convinced that adjacent does not mean next door.

Mr. Maloney asked Mr. Constantine if these lots are separated and if there is a filed map.

Counsel Addona advised the Board that this issue is currently being looked into by the Planning Board to see when the lots were separated.

Mr. Maloney referred to lot 38, which has the building on it. Adjacent to that is lot 39, which is where there is some parking. Mr. Constantine said the parking is partially on lots 38 and 37, which is an existing condition. The first 3 feet of the parking spaces are on Lot 38 and the rest is on lot 39. Mr. Maloney is just trying to see if the lots connect that way. Mr. Constantine said there is an easement for ingress and egress over lot 39 and the contract we have would provide those easements.

Mr. Constantine went back to the definition of adjacent in the code. They are asking the Board for an interpretation and to understand the specific term "adjacent". The word "contiguous" means that the properties touch. The adjacent definition, as opposed to contiguous, to him means "nearby".

Counsel Addona asked Mr. Constantine if this definition was submitted to the Board in their materials. Mr. Constantine said it is basically in the Webster dictionary, but he can. Counsel Addona said if it is the record then it is something the Board can consider.

Mr. Constantine referenced section 305-62-10, where it speaks of merger and adjoining lots.

Ms. Lawrence said Mr. Maloney has a good point. She has a different opinion with respect to the definition of adjacent. She does not feel that the parking lot area is adjacent to the building area and agrees with the Building Inspector's interpretation. However, she asked Mr. Constantine to submit definitions of adjacent and contiguous for the Board to review.

Mr. Constantine said to the extent that there is an easement over this property the code does not say the client has to own or have title. It allows rights for ingress and egress for vehicles and pedestrians that park on lot 37 to seek access to the storage facility. It does not say that his client has to own the lot just that the lots have to be adjacent.

Mr. Constantine said we are also seeking alternative relief for off- site parking, 300 feet away by normal pedestrian access, which is not unusual in the village. Ms. Lawrence agrees; for example, the jazz forum was granted off-site parking; however they came in front of the Board for a variance.

Counsel Addona explained that this is not actually a variance; it just gives them approval of the off-site parking.

Mr. Constantine said in that spirit, we are before you. This proposal serves many of the purposes and has low impact on traffic, parking and municipal resources. We are here for an interpretation. We ask for you to consider this interpretation. If Board does not agree, then we have the ability under 305-63 to ask for your approval for this off-parking. It is not a variance but it is your approval. We believe we have a code compliant plan worthy of approval. We have all the rights to traverse the property. You can't build on it. There are perpetual easements. We will have these easements and we believe the properties are adjacent for the purposes of providing parking for the self-storage facility on lot 38.

Mr. Jolly asked who owns Lot 39. Mr. Constantine said American Independent Paper. Counsel Addona asked if they included the proposed easement with the application.

Mr. Constantine said yes and referenced Exhibit A and Exhibit C, which are the general terms of the easement agreement. It means the applicant has every right for means of

ingress or egress to traverse the property, without violating the rights of metro north and Westchester County, so in this case, the lots are adjacent.

Ms. Lawrence asked Mr. Pennella to elaborate on his interpretation.

Mr. Pennella said his interpretation is straight forward. Adjacent means there is no gap or space between the lots, or such an easement that goes through the property. The applicant brought up the word adjoining, but that context refers to non-conforming lots, which is not the same issue. This is a code compliant plan, so it is not a variance it is just an approval for off-site parking. Adjacent means there is nothing in between.

Ms. Lawrence asked if anyone in the public would like to speak. No one appeared.

Counsel Addona advised there are two issues to be discussed, the interpretation of the Building Inspector's determination and an issue of approval for off-site parking.

This interpretation is a Type II action for SEQRA purposes. The Board can only rule on an interpretation and cannot take any action on the off-site parking approval. The Public Hearing must be continued until SEQRA is closed at Planning in order to consider an approval for off-site parking.

Ms. Lawrence asked the Board how they felt about the interpretation.

Mr. Jolly said "contiguous" is more of what this is not. Adjacent means the lots have to be right next to each other.

Ms. Lawrence agreed and asked for some examples of contiguous properties that are not next to each other.

Mr. Constantine said he is not saying that contiguous properties are not next to each other. Section 305-63 ( C ) 1 of the code requires that this parking is provided on adjacent lots. It does not say "contiguous" to make that clear, which is why he believes they do not need to be contiguous.

Mr. Maloney said he is not ready to make a decision. If they are using lot 39 for parking then lot 39 is adjacent to lot 37. So, in that respect, it would seem to me that they are adjacent. He would like more clarification.

Ms. Lawrence said yes, we need to look at this more carefully.

She moved that they adjourn to research this further and allow her to read the easement, and continue the Public Hearing at the next meeting, and make a decision then.

Counsel Addona suggested that the applicant provide more information with regard to where the parking will be on lot 39. Mr. Constantine said this is clearly on the plan. He

will also provide dictionary definitions on “adjacent” and “adjoining”. He believes this proposal is viable to the extent we are pursuing this interpretation for the ultimate goal of making this proposal a reality. He added that it is his opinion that this interpretation of the code as applied to this property is not to change the code. With the easements, the interpretation does not accurately reflect the situation. They are asking the Board to interpret the code based upon the facts.

Mr. Peter Bartolacci, 67 Miller Avenue, came up and asked if someone could explain to him what the purpose of this law is. Counsel Addona said no one can speak to the legislative intent since it was adopted by the Village Board. Mr. Bartolacci again asked why this law exists in the first place and why do the lots have to be adjacent. He said if everyone could understand what the law is intended to do; it could help to define what “adjacent” means in the context of this law.

Ms. Lawrence thanked Mr. Bartolacci for his comments.

ADJOURNMENT

Ms. Lawrence moved, seconded by Mr. Maloney, to continue the public hearing and that the meeting be adjourned – 9:00 p.m. All in favor. Motion carried.

Liz Meszaros- Secretary

# EXHIBIT A

## **ZONING BOARD OF APPEALS RESOLUTION**

Application of Peter Bartolacci (the "Applicant")  
67 Miller Avenue, Tarrytown, NY 10591 (the "Property")  
Sheet 1.70, Block 40, Lot 4  
R-10 Zoning District

WHEREAS, the Applicant has appealed to the Village of Tarrytown Zoning Board of Appeals ("ZBA") from a determination by the Building Inspector that the proposed retaining wall does not comply with the requirements of Chapter 305 of the Village of Tarrytown Zoning Code ("Zoning Code"), and

WHEREAS, the Applicant originally sought a variance of 14 feet to allow a proposed single wall/retaining wall of 20 feet where Zoning Code § 305-47B; 305-47B (7) only allow for a 6-foot high retaining wall, and

WHEREAS, a duly noticed public hearing was held on this application at the regular meeting of the ZBA on June 12, 2017, and

WHEREAS, at the June 12, 2017 meeting, the Applicant presented the history of the application (that originally began in 2013), including that there had been various proposals in connection with the proposed wall ranging from a single tier to multiple tiers, and

WHEREAS, the Applicant has previously appeared before the Village of Tarrytown Planning Board and presented at the April 2017 Planning Board meeting a three-tier design that did not require any variances as none of the three tiers exceeded 6 foot in height, but the Applicant advised the ZBA that the Planning Board expressed concerns in connection with the three-tiered (zoning compliant) proposal as with the three-tiered design there was limited opportunity for screening/landscaping, and

WHEREAS, after consideration of the Planning Board's concerns about the lack of landscaping/screening in the three-tiered design, the Applicant presented a one-wall design that afforded a significantly greater planting area than the three-tiered design and required the installation of substantially less fill, and

WHEREAS, after hearing input from neighbors and the public, the ZBA requested that the Applicant consider a different design with a lower wall than the proposed 20-foot wall and continued the public hearing until July 10, 2017 and then until August 14, 2017, and

WHEREAS, at the July 10, 2017 public hearing, the Applicant presented a concept plan for a two-tiered wall in which each wall did not exceed 9.5 feet and before the August 14, 2017 meeting presented a more-developed plan for said two-tiered wall design entitled "Site Plan Peter & Suzanne Bartolacci" dated January 24, 2017 and last revised July 28, 2017 (hereinafter "Approved Plan"), and

WHEREAS, members of the public having had an opportunity to speak on the application, the public hearing was closed on August 14, 2017 and the Board directed that counsel prepare a draft resolution for it to consider at its September 11, 2017 meeting, and

WHEREAS, this Board deliberated at its September 11, 2017 meeting and after having the opportunity to visit the Property and after duly considering all the proofs and evidence before it, determines as follows:

IT IS HEREBY RESOLVED, that this is a Type II action under the State Environmental Quality Review Act, and therefore no further environmental review is required, and

IT IS HEREBY FURTHER RESOLVED, the findings of this Board are as follows:

1. There will be no undesirable change produced in the character of the neighborhood or detriment to nearby properties as a result of the variance requested. The Applicant introduced numerous examples of walls in the neighborhood and surrounding community exceeding 9.5 feet in height. Further, there was evidence produced that there had previously existed a fairly significant wall in the Applicant's yard (and there are existing portions of said wall on the Applicant's property currently). The proposed two-tiered wall system allows for more robust and larger sized plantings in front of each of the proposed tiered walls that will afford greater screening to the neighboring properties.
2. The benefit sought cannot be achieved by some method feasible for the Applicant to pursue other than seeking the area variance. Although the Applicant could erect a zoning-compliant three-tiered wall system (with each wall not exceeding 6 feet), the zoning-compliant three-tiered plan would provide very limited plantings that would not provide sufficient screening. While a variance is needed for the two-tiered design as the walls at their highest points exceed 6 feet (but not 9.5 feet), there is opportunity for significant plantings that will afford screening. The benefit to the Applicant in pursuing this application is not simply to stabilize the slope but to make Applicant's backyard safer with more usable space. Just like numerous applicants that appear before this Board seeking variances, the Applicant is attempting to improve his property and expand the usable area of his property. This Board does not agree that the only benefit that the Applicant can seek to attain is to stabilize the rear slope. Due to the existing elevations and the property's topography, the Applicant cannot provide a zoning-compliant wall system that will also allow for sufficient landscaping to provide screening. This Board recognizes that while the Applicant has the right to erect the zoning-complaint three-tiered design without any approvals from this Board, such zoning-complaint erection with its minimal plantings would not effectively screen the walls and therefore, would be more visually impactful on the neighbors. As a result, the Approved Plan that proposes substantial plantings and trees with larger roots, it more beneficial to the neighbors.
3. The variance is not substantial and in fact, during the course of the Zoning Board's review and in response to comments from this Board and the public, the Applicant substantially reduced the scope of the requested variance from 14 feet (to allow for a

20-foot wall) to 3.5 feet (to allow for two 9.5 foot walls). In addition, the proposed walls are not 9.5 feet for to the full length of the wall but rather the height ranges from six feet to 9.5 feet.

4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. There is nothing in the record to suggest there will be any adverse impacts provided that this Board's conditions (set forth below) are adhered to. The landscaping proposed will screen the wall and provide for a more natural setting and emphasis on native plantings. The Applicant proposes to erect a wall and there was evidence presented that there had been a wall in some form on the property for many years.
5. The hardship is not self-created as the conditions of the site and the need for variances are the result of preexisting, nonconforming conditions on the site and/or topography of the site. And to the extent the hardship was self-created, this factor does not preclude the granting of the variance.
6. This Board is granting the minimum variance necessary for the Applicant to achieve his benefit and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community as only through a variance grant can there be sufficient screening. The zoning-complaint plan would require another tiered level and there would be insufficient room between the tiers to afford sufficient screening. The Applicant has substantially reduced the scope of the variance request (from a proposed 20-foot wall requiring a 14-foot variance to a 9.5 foot wall requiring a 3.5 foot variance) and this Board finds that the 3.5 foot variance is the minimum necessary to obtain the benefit of a screened wall.

AND IT IS FURTHER RESOLVED based upon the foregoing findings, the application is granted subject to the following conditions:

1. Except as otherwise set forth herein, the variances are granted solely in connection with the Approved Plan (and incorporated herein by reference). If any changes are made to the Approved Plan (other than those deemed by the Building Inspector to be minor field changes or other than changes made by the Planning Board in connection with its site plan review) this variance grant becomes void and the Applicant must make a new application to the ZBA for approval of any and all variances. Notwithstanding the foregoing, this variance shall be deemed null and void even if changes are made in connection with a plan approved by the Planning Board if such plan: (1) is not consistent with the two-tiered wall design presented the ZBA as the ZBA is not granting a variance for anything other than two-tiered walls; or (2) is not consistent with the proposed tow/base of the first wall of the proposed two-tiered wall being located a minimum distance of 7.5 feet from the rear property line.
2. The variance is granted subject to the Property continuing to be used as a single home.



3. The variance is granted subject to the Planning Board approving a landscape plan (after input from the Village's landscape architect), which landscape plan shall not propose any less opportunity for screening than the concept landscape plan presented to the Zoning Board (as depicted on the Approved Plan) and the Zoning Board requests that the Planning Board require robust plantings that will provide the greatest opportunity to screen the proposed two-tiered wall.
4. This variance is granted subject to the Planning Board reviewing and approving a Construction Management Plan that will provide for staging of construction of the proposed walls and ensure the protection of adjoining and neighboring properties, including protection of existing mature trees.
5. This variance is granted subject to the Applicant restoring and repairing the existing stone wall on or near the rear property line at its existing length and average height and Applicant shall not increase the average height of the existing stone wall.
6. This variance is granted subject to and based upon the Applicant's representation that the proposed two-tiered wall will not be 9.5 feet high for the full length of each of the tiers, but rather, the heights will range from 6 feet to 9.5 feet over the length of each wall.
7. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval or permit of any other board or agency or officer prescribed by law or ordinance with regard to the Approved Plan or construction or any other phase of the project. The granting of this application shall not be deemed to relieve the Applicant of the need to comply with any and all other local, state and federal requirements, including but not limited to compliance with the New York State Uniform Fire Prevention and Building Code.
8. This variance is granted subject to the accuracy of the representations made by the Applicant and its representatives to the ZBA in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the ZBA the variance grant may be deemed void, in which case the Applicant must make a new application to the ZBA for approval of any and all variances.
9. The Applicant shall procure a building permit from the Building Department within one (1) year of the date of this Resolution or one (1) year from obtaining the last required land use board approval (i.e. planning board or architectural review board), whichever is later, and all work shall be completed within one (1) year from the date of the building permit, otherwise this variance grant becomes void; and any request to extend the time within which to obtain said building permit or complete said work shall be filed no less than sixty (60) days prior to the expiration of the one (1) year period.
10. The failure to observe and perform these conditions shall render this resolution invalid.

Dated as of September 11, 2017

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Chair

In Favor:     —  
Opposed:     —  
Abstain:     —  
Absent:      —

DRAFT